

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

KAREN HUYCK,

3:15-CV-01298-BR

Plaintiff,

OPINION AND ORDER

v.

Limitless, LLC, an Oregon
Limited Liability Company,

Defendant.

GLENN N. SOLOMON
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Portland, OR 97204
(503) 241-3508

Attorney for Plaintiff

JEREMY L. FELLOWS
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Attorney for Defendant

1 - OPINION AND ORDER

BROWN, Judge.

This matter comes before the Court on Plaintiff's Motion (#44) for Attorney Fees and Costs. For the reasons that follow, the Court **DENIES** Plaintiff's Motion.

BACKGROUND

On July 13, 2015, Plaintiff Karen Huyck filed a Complaint for Wages Due and Owing in this Court.

On May 10, 2016, Plaintiff filed a Motion for Summary Judgment.

On May 31, 2016, Defendant filed a Cross-Motion for Summary Judgment.

On September 26, 2016, the Court issued an Opinion and Order in which it granted Plaintiff's Motion for Summary Judgment as to Plaintiff's claim for failure to pay overtime in violation of the Fair Labor Standards Act (FLSA), 29 U.S.C. § 201, *et seq.*; denied Plaintiff's Motion as to Plaintiff's claims for breach of contract and penalty wages under Oregon Revised Statute § 652.150; granted Defendant's Cross-Motion for Summary Judgment as to Plaintiff's claims for breach of contract and penalty wages under Oregon Revised Statute § 652.150; denied Defendant's Cross-Motion as to Plaintiff's claim for failure to pay overtime in

violation of the FLSA; and awarded Plaintiff damages for back overtime wages and liquidated damages.

The Court entered a Judgment on October 21, 2016.

On November 10, 2016, Plaintiff filed a Motion for Attorney Fees and Costs.

DISCUSSION

In her Motion Plaintiff asserts she was the prevailing party in her FLSA claim and seeks attorneys' fees in the amount of \$15,837.50 pursuant to 29 U.S.C. § 216(b), which provides the "court in [an] action [for violation of the FLSA] shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action." Plaintiff also seeks costs of \$436.00 comprised of fees for filing this action and for service of process

Defendant does not dispute Plaintiff was the prevailing party as to her claim for her FLSA claim for failure to pay overtime. Defendant, however, asserts the Court should deny Plaintiff's Motion because the Motion is untimely and because she failed to confer before she filed the Motion.

Federal Rule of Civil Procedure 54 provides "a claim for

attorney's fees and . . . nontaxable expenses must be made by motion . . . [and] . . . the motion must . . . be filed no later than 14 days after the entry of judgment." Fed. R. Civ. P. 54(d)(2)(A)-(B)(I). The Ninth Circuit has held "[a]lthough the 14-day period is not jurisdictional, the failure to comply [with Rule 54] should be sufficient reason to deny the [Rule 54] motion, absent some compelling showing of good cause.'" *Perfect 10, Inc. v. Giganews, Inc.*, 2017 WL 279504, at *13 (9th Cir. Jan. 23, 2017) (quoting *Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d 877, 889-90 (9th Cir. 2000)).

Plaintiff filed her Motion for Attorney Fees and Costs on November 10, 2016, which is 20 days after the Court entered the Judgment in this matter. In her Motion Plaintiff does not provide any reason why she was unable to file her Motion timely. Moreover, Plaintiff did not request additional time to file the Motion. The Court, therefore, concludes Plaintiff has failed to make a compelling showing of good cause for her failure to comply with Rule 54. In addition, the Court notes it previously has had to require Plaintiff to show cause why she failed to file timely responses to Defendant's Motions and to remind Plaintiff that she must request an extension of time to file documents late.

Accordingly, the Court **DENIES** Plaintiff's Motion for Attorney Fees and Costs.

CONCLUSION

For these reasons, the Court **DENIES** Plaintiff's Motion
(#44) for Attorney Fees and Costs.

IT IS SO ORDERED.

DATED this 27th day of January, 2017.



ANNA J. BROWN
United States District Judge